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Portland, OR 97204

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

C & K Market, Inc.,

Debtor.

Case No. 13-64561-fra11

**DEBTOR'S MOTION TO REJECT
EXECUTORY CONTRACT
(GE FLEET SERVICES)**

C & K Market, Inc. debtor and debtor-in-possession herein ("Debtor"), moves this Court for an order approving Debtor's rejection of the executory contract identified on **Exhibit 1** attached hereto (the "GE Fleet Services Contract"), with such rejection to be effective as of the date of this Motion. In support of this Motion, Debtor incorporates the statements contained in the Declaration of Edward Hostmann in Support of First Day Pleadings ("First Day Declaration") filed contemporaneously herewith, and further respectfully states as follows:

JURISDICTION AND VENUE

1. On November 19, 2013 (the "Petition Date"), Debtor filed a voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code.

2. Debtor has continued in possession of its property and is continuing to operate and manage its business as debtor-in-possession pursuant to Sections 1107(a) and 1108 of Title 11 of the United States Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committee of unsecured creditors has been appointed in Debtor's case.

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. The relief requested herein by Debtor is based on the Court's authority pursuant to 11 U.S.C. § 105(a) and 11 U.S.C. § 365.

FACTUAL BACKGROUND

6. C & K is a family owned grocery store company headquartered in Brookings, Oregon. Ray Nidiffer founded the company in 1956 with a single store in Brookings. Over the next 50 years, the Nidiffer family and its employees grew the company to a chain of 60 stores, operating mostly in small rural communities, with 41 stores in Oregon and 19 stores in northern California. The stores operate under the banners Ray's Food Place, Shop Smart and C & K Market ("Market"). Market employs over 2,300 employees, approximately 57% of whom are full-time. Market has an average biweekly payroll in excess of \$2,700,000 and provides family health insurance for all its full-time employees.

7. Pursuant to the GE Fleet Services Contract, Debtor leases 28 cars from Gelco Corporation, dba GE Fleet Services ("GEFS"). The cars have been used by Debtor's

1 employees to visit stores, travel to store projects, or for other business travel. Debtor seeks
 2 entry of an order approving rejection the GE Fleet Services Contract.

3 **RELIEF REQUESTED**

4 8. Debtor seeks authorization pursuant to Sections 105(a) and 365 of the
 5 Bankruptcy Code to reject the GE Fleet Services Contract.

6 **BASIS FOR RELIEF**

7 9. Debtor has determined in its sound business judgment that rejecting
 8 the GE Fleet Services Contract is in the best interest of Debtor and its estate because the
 9 GE Fleet Services Contract is burdensome to the estate and the cars are not necessary to
 10 Debtor's business going forward. Specifically, (A) Debtor no longer needs certain cars
 11 associated with store projects that are being dissolved or completed, or with positions that are
 12 being eliminated; (B) Debtor owns enough cars (in its "owned fleet") to accommodate the
 13 business travel needs of certain employees who regularly travel on Debtor's behalf; and
 14 (C) to the extent certain employees only travel infrequently on Debtor's behalf, it is more
 15 economical to reimburse those employees for miles traveled on their own cars instead of
 16 providing them with a car from the GEFS fleet.

17 10. Section 365(a) of the Bankruptcy Code provides that a debtor, subject
 18 to the court's approval, may reject any executory contract. The rejection of an executory
 19 contract by a debtor is subject to review under the business judgment standard. *In re*
 20 *Pomona Valley Medical Group*, 476 F.3d 665, 670 (9th Cir. 2007). If the debtor's business
 21 judgment has been reasonably exercised, a court should approve the assumption or rejection
 22 of an executory contract. *In re Yellowstone Mountain Club, LLC*, Nos. 08-61570-11,
 23 08-61571-11, 08-61572-11, 08-61573-11, CV-09-48-BU-SHE, at *2 (D. Mont. 2010
 24 Dec. 7, 2010). In applying the "business judgment" standard, courts show great deference to
 25 the debtor's decision to reject. *Summit Land Co. v. Allen*, 13 B.R. 310, 315 (Bankr. D. Utah
 26

1 1981) (absent extraordinary circumstances, court approval of a debtor's decision to reject an
2 executory contract "should be granted as a matter of course").

3 11. Debtor has determined in the exercise of its business judgment that
4 rejection of the GE Fleet Services Contract is in the best interest of Debtor and its estate, and
5 accordingly this Court should grant Debtor's Motion.

6 WHEREFORE, Debtor respectfully requests that this Court enter an order
7 substantially in the form attached hereto as **Exhibit 2** approving Debtor's rejection of the
8 GE Fleet Services Contract.

9 DATED this 21st day of November, 2013.

10 TONKON TORP LLP

11
12 By /s/ Ava L. Schoen

13 Albert N. Kennedy, OSB No. 821429
14 Timothy J. Conway, OSB No. 851752
15 Michael W. Fletcher, OSB No. 010448
16 Ava L. Schoen, OSB No. 044072
17 Attorneys for Debtor
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EXHIBIT 1

EXECUTORY CONTRACT

GE Fleet Services Contract

**Name of Other Party to
Contract**

Gelco Corporation dba
GE Fleet Services

Contract to be Rejected

Master Lease Agreement and all related documents,
modifications, amendments, and agreements relating
thereto

EXHIBIT 2

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

C & K Market, Inc.,

Debtor.

Case No. 13-64561-fra11

**ORDER GRANTING DEBTOR'S
MOTION TO REJECT EXECUTORY
CONTRACT (GE FLEET SERVICES)**

THIS MATTER having come before the Court on Debtor's Motion to Reject Executory Contract (GE Fleet Services) pursuant to Sections 105(a) and 365 of the Bankruptcy Code (the "Motion") [Dkt. #___], the Court having reviewed the Motion and the First Day Declaration; and the Court having found that (1) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (2) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (3) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (4) notice of the Motion was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of Debtor, its estate and the creditors; and good and sufficient cause having been shown;

* * *

* * *

IT IS HEREBY ORDERED that the Motion is granted, and Debtor's executory contract identified on **Exhibit 1** attached hereto, and all modifications, amendments and agreements related thereto, are hereby rejected.

#

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

TONKON TORP LLP

By _____
Albert N. Kennedy, OSB No. 821429
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava L. Schoen, OSB No. 044072
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cc: List of Interested Parties

EXHIBIT 1

EXECUTORY CONTRACT

GE Fleet Services Contract

**Name of Other Party to
Contract**

Gelco Corporation dba
GE Fleet Services

Contract to be Rejected

Master Lease Agreement and all related documents,
modifications, amendments, and agreements relating
thereto

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEBTOR'S MOTION TO REJECT EXECUTORY CONTRACT (GE FLEET SERVICES)** was served on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, the parties indicated as "Non-ECF" on the attached List of Interested Parties were served by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each party's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below.

DATED this 21st day of November, 2013.

TONKON TORP LLP

By /s/ Ava L. Schoen

Albert N. Kennedy, OSB No. 821429
Timothy J. Conway, OSB No. 851752
Michael W. Fletcher, OSB No. 010448
Ava L. Schoen, OSB No. 044072
Attorneys for Debtor

LIST OF INTERESTED PARTIES

In re C & K Market, Inc.
U.S. Bankruptcy Court Case No. 13-64561-fra11

ECF PARTICIPANTS

- RICHARD T ANDERSON rick@andersonmonson.com, lisa@andersonmonson.com
- TIMOTHY J CONWAY tim.conway@tonkon.com, nancy.kennedy@tonkon.com
- BRADLEY S COPELAND bcopeand@agsprp.com, bdavis@agsprp.com
- MICHAEL W FLETCHER michael.fletcher@tonkon.com, leslie.hurd@tonkon.com;andy.haro@tonkon.com
- DAVID A FORAKER david.foraker@greenemarkley.com, joyce.chartrand@greenemarkley.com
- RUSSELL D GARRETT russ.garrett@jordanramis.com, lisa.mckee@jordanramis.com;priscilla.gray@jordanramis.com;litparalegal@jordanramis.com
- THOMAS A HUNTSBERGER tom@tahpc.com
- GREGG D JOHNSON gdj@aterwynne.com, jmh@aterwynne.com
- ROBERT B KAPLAN rbk@jmbm.com
- ALBERT N KENNEDY al.kennedy@tonkon.com, leslie.hurd@tonkon.com;andy.haro@tonkon.com
- JEFFREY C MISLEY jeffm@sussmanshank.com, ecf.jeffrey.misley@sussmanshank.com
- WILSON C MUHLHEIM scooke@luvaascobb.com
- TERESA H PEARSON teresa.pearson@millernash.com, lisa.conrad@millernash.com;brenda.hale@millernash.com
- DAVID L POLLACK pollack@ballardspahr.com
- AVA L SCHOEN ava.schoen@tonkon.com, larissa.stec@tonkon.com
- US Trustee, Eugene USTPRegion18.EG.ECF@usdoj.gov
- DAVID P WEINER david.weiner@greenemarkley.com

NON-ECF PARTICIPANTS

SECURED CREDITORS

Banc of America
Leasing & Capital LLC
2059 Northlake Parkway 4 South
Tucker, GA 30084

Dell Financial Services LLC
Mail Stop-PS2DF-23
One Dell Way
Round Rock, TX 78682

James D. Gillespie
28274 S. Fork Rd.
Dayville, OR 97825

Greatway Center Property LLC
8816 E. Evans Creeks
Rogue River, OR 97537

Green & Frahm
941 Delsie Dr.
Grants Pass, OR 97527

Komlofske Corp.
1535 E. 3rd St.
Prineville, OR 97754

Ken and Lynda Martin
80380 Torreon Way
La Quinta, CA 92253

Protective Life
2801 Highway 280 South
Birmingham, AL 35202

TOP 20 UNSECURED CREDITORS

Western Boxed Meat Inc.
2401 NE Argyle St.
Portland, OR 97211

Umpqua Dairy Products
333 SE Sykes
Roseburg, OR 97470

Umpqua Dairy Products
c/o Dan W. Clark
Dole, Colewell, Clark, et al
POB 1205
Roseburg, OR 97470

Bigfoot Beverages
86776 McVay Hwy.
Eugene, OR 97405

Core-Mark Intl
395 Oyster Point Blvd., #415
So. San Francisco, CA 94080

VPD IV Inc.
6051 S Watt Ave.
Sacramento, CA 95829

J B Hunt
File #98545
615 J.B. Hunt Corporate Dr.
Lowell, AR 97245

Komlofske Corp.
1535 E. 3rd St.
Prineville, OR 97754

Tarks, Inc.
3752 Colver Rd.
Phoenix, OR 97535

Willamina Foods, LLC
8630 SW Scholls Ferry Rd.
Beaverton, OR 97008

Marc and Charlotte Gould
5494 Goodrich Hwy.
Oakland, OR 97462

Marc and Charlotte Gould
c/o Raymond M. Ramsay
Ramsay & Stein PC
4285 Commercial St SE #140
Salem, OR 97302

S and J Reed, Inc.
c/o Steve Reed
2100 Pine Gate Way
White City, OR 97503

Nor-Cal Produce Inc.
2995 Oates St.
West Sacramento, CA 95691

The News Group
3995 70th Ave. E #B
Fife, WA 98424-1126

Pacific Power & Light Co.
1033 NE 6th Ave.
Portland, OR 95256-9199

Coca Cola Bottling Company
15333 SW Sequoia Pkwy.
Portland, OR 97224

Reser's Fine Foods Inc.
15570 SW Jenkins Rd.
Beaverton, OR 97006

GE FLEET SERVICES:

GE Fleet Services
Gelco Corporation
Three Capital Drive
Eden Prairie, MN 55344

GE Fleet Services
Gelco Corporation
6464 185th Avenue NE #100
Redmond, WA 98051

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